

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No. SRPD 98/99 SCB-4026
	)	
	)	
	)	
Air Industries Corporation	)	
12570 Knott Street	)	CONSENT ORDER
Garden Grove, California 92841	)	
	)	
EPA ID Number CAD009548256	)	
	)	Health and Safety Code
Respondent	)	Section 25187
_____	)	

The State Department of Toxic Substances Control  
(Department) and Air Industries Corporation (Respondent) enter  
into this Consent Order (Order) and agree as follows:

1. Section 25187 of the Health and Safety Code (HSC)  
authorizes the Department to issue an enforcement order when  
the Department determines that there may be a violation or  
threatened violation of the Health and Safety Code or any  
regulation adopted pursuant thereto. Onsite treatment of  
cyanide wastes without a permit, consent order, or other grant  
of authorization from the Department is a violation of Health  
and Safety Code section 25201. The Department is the state  
agency authorized by U.S. EPA to implement the federal Resource  
Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.  
in California. The Department implements and enforces the

Hazardous Waste Control Law, Health and Safety Code §25100 et seq., and the implementing regulations, Title 22, California Code of Regulations, (22 Cal. Code Regs.) Division 4.5, in lieu of RCRA in California.

2. The Department intends to establish appropriate grants of authorization for cyanide wastes as part of its Regulatory Structure Update project or other rulemaking process.

3. The respondent has submitted notification under Permit by Rule (PBR).

4. Respondent waives any right to a hearing in this matter.

5. This Order shall constitute full settlement of the alleged violation, but does not limit the Department from taking appropriate enforcement action concerning other violations. By entering into this Consent Order, however, Respondent makes no admission that any violation occurred.

#### **RESPONDENT'S CURRENT ACTIVITIES**

6. Unauthorized Non-eligible Onsite Treatment Activity. The Respondent's current disputed activity is treatment of 70,000 gallons per month of cadmium cyanide rinse water containing 80 mg/l cyanide, by cyanide destruction using sodium

hypochlorite. The treatment activity utilizes 10 tanks under Unit Name Waste Water Treatment-CN, and Unit ID Number FTUWWT9105.

#### **SCHEDULE FOR COMPLIANCE**

7. Respondent shall comply with the following:

7.1 Respondent may continue operating activities described

in Paragraph 6.0 to the extent authorized under this Order.

7.2. When Permit By Rule (PBR) regulations or other forms of authorization are approved for any activity authorized pursuant to Paragraph 7.1 covered by this Order, Respondent will comply with all requirements for operation under those provisions and this Order will no longer apply to that activity.

7.2.1. If the Department later notifies Respondent that Respondent's activity authorized pursuant to Paragraph 7.1 will not be addressed under PBR or other forms of authorization, the Respondent shall cease treatment of wastes containing cyanide and complete closure of the unit(s), or within 60 days of such notification apply for a full permit following the requirements of Title 22, California Code of Regulations (22 Cal. Code Regs.), Division 4.5, Chapter 20. Closure shall be conducted in accordance with interim status facility closure requirements

specified in 22 Cal. Code Regs., Division 4.5, Chapter 15, Article 7. If Respondent chooses to apply for a permit, Respondent shall comply with the conditions of this agreement until a permit decision is made.

7.2.2. If Respondent fails to comply with this Order, Respondent shall cease operation of hazardous waste facility activities authorized pursuant to Paragraph 7.1 and begin closure of those activities. Closure shall be conducted in accordance with interim status facility closure requirements specified in 22 Cal. Code Regs., Division 4.5, Chapter 15, Article 7.

7.2.3. Respondent shall immediately begin work to achieve compliance with requirements applicable to a Permit By Rule facility, as detailed in 22 Cal. Code Regs., Division 4.5, Chapter 45.

7.2.4. Respondent shall achieve compliance with the requirements listed in Paragraph 7.2.3 within 10 days of the effective date of this Order, unless a different date is specified below.

7.2.5. **Identification Number.** If Respondent does not have an Identification Number as required by 22 Cal. Code Regs., section 66265.11, Respondent shall apply for an Identification Number within 10 days of the effective date of

this Order.

7.2.6. **Required Notices.** Respondent shall comply with all requirements of 22 Cal. Code Regs., section 66265.12 beginning the day after the effective date of this Order.

7.2.7. **Waste Analysis.** (a) Within 60 days of the effective date of this Order, Respondent shall develop and implement a written waste analysis plan meeting the requirements of 22 Cal. Code Regs., section 66265.13. (b) Respondent shall comply with 22 Cal. Code Regs., section 66265.13 once a waste analysis plan is developed.

7.2.8. **Security.** Respondent shall comply with 22 Cal. Code Regs., section 66265.14 within 30 days of the effective date of this Order.

7.2.9. **Inspections.** (a) Within 30 days of the effective date of this Order, Respondent shall develop and implement a written inspection schedule meeting the requirements of 22 Cal. Code Regs., section 66265.15. (b) Respondent shall comply with 22 Cal. Code Regs., section 66265.15 once an inspection schedule is developed.

7.2.10. **Personnel Training.** Respondent shall implement a training program meeting the requirements of 22 Cal. Code Regs., section 66265.16 for facility personnel within 10 days

of the effective date of this Order. All personnel shall complete the required training within 30 days of the effective date of this Order.

**7.2.11. Ignitable, Reactive or Incompatible Wastes.**

Respondent shall comply with 22 Cal. Code Regs., sections 66265.17, 66265.176 - 66265.177, and 66265.198 - 66265.199, beginning the day after the effective date of this Order.

**7.2.12. Operating Record.** Respondent shall comply with the requirements of 22 Cal. Code Regs., section 67450.3(c)(9)(D) beginning the day after the effective date of this Order. Within 30 days of the effective date of this Order, Respondent shall compile all existing records of previous activities which would have been required to be kept under this section, and incorporate those records into the current operating record, to the extent possible.

**7.2.13. Closure.** Respondent shall comply with all closure requirements as outlined in 22 Cal. Code Regs., sections 67450.3(c)(8)(G) and (c)(11)(B) within 60 days of the effective date of this Order.

**7.2.14. Closure Cost Estimate.** Respondent shall prepare and maintain a written closure cost estimate for the facility meeting the requirements of 22 Cal. Code Regs., section 67450.13(a)(1) - (3) within 60 days of the effective date of

this Order.

7.2.15. **Closure Cost Assurances.** Respondent shall establish and demonstrate to the Department financial assurance for closure in the amount of the closure cost estimate developed pursuant to Paragraph 7.2.14, as required under 22 Cal. Code Regs., section 67450.13(a)(5) within 60 days of the effective date of this Order.

7.2.16. **Corrective Action Requirement.** Respondent shall comply with the Phase I Environmental Assessment requirements specified in HSC, section 25200.14(a), (b), and (c), and in 22 Cal. Code Regs., section 67450.7 within 60 days of the effective date of this Order. If the Department determines that the results of the Assessment conducted by the Respondent indicate that further investigation is needed, Respondent shall comply with the requirements of HSC, section 25200.14(d).

7.2.17. **Management of Wastes in Tank Systems.** Respondent shall comply with the following requirements regarding hazardous waste tanks that fail to meet the requirements of 22 Cal. Code Regs., section 66265.193:

7.2.17.1. Respondent shall conduct an integrity assessment that meets the requirements of 22 Cal. Code Regs., section 66265.191 for the tank system lacking full secondary

containment by January 24, 1998.

7.2.17.2. If the integrity assessment conducted pursuant to Paragraph 7.2.17.1 shows that the tank system is leaking or unfit for use, Respondent shall comply with the requirements of 22 Cal. Code Regs., section 66265.196.

7.2.17.3. Respondent shall provide secondary containment meeting the requirements of 22 Cal. Code Regs., subsections 66265.193(c), (d)(1 - 3) and (e) for the entire tank system by January 24, 1998, or shall close the tank system in accordance with applicable regulatory requirements by January 24, 1998.

7.2.17.4. Respondent shall conduct an integrity assessment of those portions of the tank system not meeting the secondary containment requirements of 22 Cal. Code Regs., section 66265.191 annually from the date of the integrity assessment conducted pursuant to Paragraph 7.2.17.1 until the entire tank system meets applicable regulatory requirements.

7.2.17.5. Notwithstanding the above, Respondent agrees to comply with applicable regulations specifying alternatives to the secondary containment requirements currently in 22 Cal. Code Regs., section 66265.193, if adopted by the Department.

7.2.18. **Facility Modifications.** All facility modifications for activities authorized under Paragraph 7.1 must be approved by the Department prior to any such changes.



7.3. **Submittals.** All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

Mr. Jack L. Miller, Director  
Environmental Health Division  
Orange County Health Care Agency  
2009 East Edinger Avenue  
Santa Ana, California 92705-4720

7.4. **Communications.** All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in writing by the Regional State Regulatory Programs Division Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

7.5. **Department Review and Approval.** If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or

the environment, the Department may: (a) modify the document as deemed necessary and approve the document as modified; (b) return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

7.6. **Compliance with Applicable Laws.** Respondent shall carry out this Order in compliance with all local, State, and Federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety, except as specifically provided in this Order.

7.7. **Endangerment During Implementation.** In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

7.8. **Liability.** Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for

any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment. By agreeing to this Order, the Department does not waive the right to take further enforcement actions.

7.9. **Site Access.** Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

**7.10. Sampling, Data, and Document Availability.**

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order.

Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

**7.11. Government Liabilities.** The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or

related parties specified in Paragraph 7.16 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

7.12. **Incorporation of Plans and Reports.** All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

7.13. **Extension Requests.** If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

7.14. **Extension Approvals.** If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

7.15. **Penalties for Noncompliance.** Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC, section 25188 and other applicable

provisions of law.

7.16. **Parties Bound.** This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department or any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Order.

7.17. **Compliance with Waste Discharge Requirements.** Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

7.18. **Integration.** This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement or agreed by the parties.

#### **ADMINISTRATIVE COSTS**

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department for its administrative costs in implementing this Order. Respondent shall reimburse the Department for its ongoing administrative costs per year for as long as Respondent operates pursuant to this Order. The

"administrative costs" is the amount the facility would be paying in fees assessed under PBR. Pursuant to Health and Safety Code section 25205.14(a), the current PBR fee is \$1001.00. Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and the Docket Number, as shown in the heading of this case. Within 30 days of the date this Order is fully executed, and within 30 days of each anniversary of the date while Respondent operates pursuant to this Order, Respondent shall deliver the administrative cost payment together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
400 P Street, 4th Floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

9.     **Effective Date.**   This Order is effective on the date  
it is signed by the Department.

Dated:     5/27/99

Signed by Robert Geoghan  
Signature of Respondent's  
Representative

Robert Geoghan  
Vice President - Operations  
Typed or Printed Name and Title of  
Respondent's Representative

Dated:     6/1/99

Signed by Stephen W.Lavinger  
Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances  
Control